

§ 550.10

12 CFR Ch. V (1–1–02 Edition)

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AUTHORITY: 12 U.S.C. 1462a, 1463, 1464.

SOURCE: 62 FR 67703, Dec. 30, 1997, unless otherwise noted.

§ 550.10 What regulations govern the fiduciary operations of savings associations?

(a) *Federal savings associations.* A Federal savings association (“you”) must conduct its fiduciary operations in ac-

cordance with 12 U.S.C. 1464(n) and this part.

(b) *State-chartered savings associations.*

(1) A State-chartered savings association must conduct its fiduciary operations in accordance with applicable State law, and must exercise its fiduciary powers in a safe and sound manner. To ensure safe and sound operations, State-chartered savings associations and their subsidiaries should follow the standards for the exercise of fiduciary powers in this part.

(2) The OTS will monitor the fiduciary operations of State-chartered savings associations and their subsidiaries to ensure that those operations are conducted in a safe and sound manner. The OTS may object to practices that deviate materially from the practices described in this part, and may restrict or prohibit activities that threaten the safety and soundness of a State-chartered savings association.

§ 550.20 What are fiduciary powers?

Fiduciary powers are the authority that the OTS permits you to exercise under 12 U.S.C. 1464(n). The scope of permissible fiduciary powers depends on the powers that the State in which you are located grants to competing fiduciaries in that State.

§ 550.30 What fiduciary capacities does this part cover?

You are subject to this part if you act in a fiduciary capacity, except as described in subpart E of this part. You act in a fiduciary capacity when you act in any of the following capacities:

- (a) Trustee.
- (b) Executor.
- (c) Administrator.
- (d) Registrar of stocks and bonds.
- (e) Transfer agent.
- (f) Assignee.
- (g) Receiver.

(h) Guardian or conservator of the estate of a minor, an incompetent person, an absent person, or a person over whose estate a court has taken jurisdiction, other than under bankruptcy or insolvency laws.

(i) A fiduciary in a relationship established under a State law that is substantially similar to the Uniform Gifts to Minors Act or the Uniform Transfers

to Minors Act as published by the American Law Institute.

(j) Investment adviser, if you receive a fee for your investment advice.

(k) Any capacity in which you have investment discretion on behalf of another.

(l) Any other similar capacity that the OTS may authorize under 12 U.S.C. 1464(n).

§ 550.40 When do I have investment discretion?

(a) *General.* You have investment discretion when you have, with respect to a fiduciary account, the sole or shared authority to determine what securities or other assets to purchase or sell on behalf of that account. It does not matter whether you have exercised this authority.

(b) *Delegations.* You retain investment discretion if you delegate investment discretion to another. You also have investment discretion if you receive delegated authority to exercise investment discretion from another.

§ 550.50 What is a fiduciary account?

A fiduciary account is an account that you administer acting in a fiduciary capacity.

§ 550.60 What other definitions apply to this part?

Affiliate has the same meaning as in 12 U.S.C. 221a(b). For purposes of this part, substitute the term “Federal savings association” for the term “member bank” whenever it appears in 12 U.S.C. 221a(b).

Applicable law means the law of a State or other jurisdiction governing your fiduciary relationships, any Federal law governing those relationships, the terms of the instrument governing a fiduciary relationship, and any court order pertaining to the relationship.

Fiduciary officers and employees means the officers and employees of a Federal savings association to whom the board of directors or its designee has assigned functions involving the exercise of the association’s fiduciary powers.

Subpart A—Obtaining Fiduciary Powers

§ 550.70 Must I obtain OTS approval before exercising fiduciary powers?

Unless you are covered by subpart E of this part, you must obtain prior approval from the OTS before exercising fiduciary powers.

§ 550.80 How do I obtain OTS approval?

You must file an application under part 516, subparts A and E of this chapter.

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§ 550.90 What information must I include in my application?

You must describe the fiduciary powers that you or your affiliate will exercise. You must also include information necessary to enable the OTS to make the determinations described in § 550.100.

§ 550.100 What factors may the OTS consider in its review of my application?

The OTS may consider the following factors when reviewing your application:

- (a) Your financial condition.
- (b) Your capital and whether that capital is sufficient under the circumstances.
- (c) Your overall performance.
- (d) The fiduciary powers you propose to exercise.
- (e) Your proposed supervision of those powers.
- (f) The availability of legal counsel.
- (g) The needs of the community to be served.
- (h) Any other facts or circumstances that the OTS considers proper.

§ 550.110 Who will act on my application?

The Director of OTS may act on any application. The Regional Director may act on an application if it does not raise any significant issues of law or policy on which the OTS has not taken a formal position.